



IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979
NO. 79-69

WILLIAM J. KELLY, APPELLANT
v.
COMMONWEALTH OF PENNSYLVANIA, APPELLEE

APPEAL FROM THE PENNSYLVANIA SUPREME COURT
MOTION TO DISMISS

MICHAEL F. HENRY
CHIEF, MOTIONS UNIT
BERNARD L. SIEGEL
DEPUTY DISTRICT ATTORNEY
FOR INVESTIGATIONS
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FOR LAW
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2400 CENTRE SQUARE WEST
PHILADELPHIA, PENNSYLVANIA 19102

MOTION TO DISMISS

PURSUANT TO RULE 16(1)(A) AND (B) OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES, APPELLEE MOVES THE COURT TO DISMISS THE APPEAL HEREIN ON THE GROUND THAT THE APPEAL IS NOT WITHIN THE JURISDICTION OF THIS COURT AS HEREINAFTER SET FORTH.

STATEMENT

THIS IS AN APPEAL FROM THE JUDGMENT OF THE PENNSYLVANIA SUPREME COURT, REPORTED AS COMMONWEALTH V. KELLY, 399 A.2d 1061 (PA. 1979), WHICH JUDGMENT AFFIRMED APPELLANT'S STATE COURT JURY CONVICTIONS FOR THREE COUNTS OF PERJURY, ONE COUNT OF OBSTRUCTION OF JUSTICE AND ONE COUNT OF BRIBERY. APPELLANT HAD PREVIOUSLY APPEALED HIS CONVICTIONS TO PENNSYLVANIA'S INTERMEDIATE APPELLATE COURT, WHICH ALSO AFFIRMED THE JUDGMENT OF SENTENCE, AS REPORTED IN COMMONWEALTH V. KELLY, 245 PA. SUPERIOR CT. 351 (1976). THE FACTS UNDERLYING THE APPEAL ARE BRIEFLY AS FOLLOWS: THE ON-GOING PENNSYLVANIA CRIME COMMISSION INVESTIGATION OF CORRUPTION IN PHILADELPHIA RESULTED IN CHARGES THAT APPELLANT, A POLICE OFFICER, HAD RECEIVED SUMS OF MONEY A NUMBER OF TIMES IN 1973 FROM ONE JOSEPH

ANTHONY HARCISE, IN EXCHANGE FOR WHICH APPELLANT WOULD REFRAIN FROM INTERFERING WITH AN UNLAWFUL GAMBLING OPERATION IN WHICH HARCISE WAS INVOLVED. THE OBSTRUCTION CHARGE ALLEGED THAT IN SEPTEMBER, 1973, APPELLANT AND HARCISE BECAME SUSPICIOUS OF AN UNDERCOVER AGENT, ANDREW MARRESE, WHO WAS POSING AS A GAMBLER, AND ARRANGED TO HAVE THE AGENT ARRESTED AND THUS BLOW HIS COVER. ONE OF THE PERJURY COUNTS CHARGED APPELLANT WITH MAKING FALSE STATEMENTS UNDER OATH BEFORE PHILADELPHIA MUNICIPAL COURT JUDGE MELTON WHO THEN ISSUED A SEARCH WARRANT WHICH LED TO THE ARREST OF THE UNDERCOVER AGENT. APPELLANT WAS ALSO CHARGED WITH TWO COUNTS OF PERJURY AS A RESULT OF HIS TESTIMONY BEFORE THE JANUARY, 1974 SPECIAL INVESTIGATING GRAND JURY,¹ WHEREIN HE REASSERTED THE FACTS SWORN TO IN THE SEARCH WARRANT AFFIDAVIT, AND DENIED ANY PRIOR DEALINGS WITH HARCISE. APPELLANT CONTENDED PRIOR TO TRIAL, BEFORE PHILADELPHIA COURT OF COMMON PLEAS JUDGE STANLEY KUBACKI, THAT HIS GRAND JURY TESTIMONY WAS COERCED. HE CLAIMED THAT THE MERE EXISTENCE OF § 10-110 OF THE PHILADELPHIA HOME RULE CHARTER TAINTED HIS GRAND JURY TESTIMONY. THAT

1. COPIES OF APPELLANT'S TESTIMONY BEFORE THIS GRAND JURY AS WELL AS THE WARNINGS ADMINISTERED TO HIM PRIOR TO SAID TESTIMONY ARE ATTACHED HEREIN AS APPENDICES A AND B RESPECTIVELY.

CHARTER PROVISION PROVIDESS INTER ALIA, FOR THE DISMISSAL OF CITY EMPLOYEES WHO FAIL TO TESTIFY BEFORE ANY COURT OR INVESTIGATIVE BODY CONCERNING THEIR OFFICIAL DUTIES. APPELLANT'S CLAIM WAS REJECTED BY THE PENNSYLVANIA COURTS SINCE HE WAS NEVER GIVEN THE ALLEGEDLY COERCIVE WARNINGS OF THE HOME RULE CHARTER. ADDITIONALLY, SINCE HE WAS SELECTIVE IN HIS ANSWERS TO QUESTIONS PROPOUNDED, INVOKING HIS FIFTH AMENDMENT PRIVILEGE ON A NUMBER OF OCCASIONS, HIS GRAND JURY TESTIMONY WAS CLEARLY NOT COERCED BY THE MERE EXISTENCE OF THE HOME RULE CHARTER. THIS WAS THE PRECISE HOLDING OF THE SUPERIOR COURT. COMMONWEALTH V. KELLY, 245 PA. SUPERIOR CT. 351, 362, AFF'D, 399 A.2d 1061, (1979).

ARGUMENT

I. THIS CASE IS NOT WITHIN THE APPELLATE JURISDICTION OF THIS COURT UNDER 28 U.S.C. § 1257(2)

IN THE INSTANT CASE APPELLANT CLAIMS THAT THIS COURT HAS DIRECT APPELLATE JURISDICTION UNDER 28 U.S.C. § 1257(2). SUCH A CLAIM IS ERRONEOUS SINCE APPELLANT CANNOT ESTABLISH THAT THE PENNSYLVANIA STATE COURTS PASSED UPON THE CONSTITUTIONALITY OF THE PHILADELPHIA HOME RULE CHARTER PROVISION REFERRED TO ABOVE. IN GARRITY V. STATE OF NEW JERSEY, 385 U.S. 493 (1967), THIS COURT CONSIDERED THE

PROPRIETY OF DIRECT APPELLATE REVIEW UNDER 28 U.S.C. 1257(2). IN GARRITY, THE NEW JERSEY SUPREME COURT DECLINED TO RULE ON THE VALIDITY OF ITS FORFEITURE STATUTE, EVEN THOUGH THE DEFENDANT THEREIN WAS WARNED THAT HE WOULD BE SUBJECT TO REMOVAL PURSUANT TO THAT STATUTE IF HE INVOKED HIS FIFTH AMENDMENT PRIVILEGE. THIS COURT HELD:

THE STATUTE IS THEREFORE TOO TANGENTIALLY INVOLVED TO SATISFY 28 U.S.C. § 1257(2), FOR THE ONLY BEARING IT HAD WAS WHETHER, VALID OR NOT, THE FEAR OF BEING DISCHARGED UNDER IT FOR REFUSAL TO ANSWER ON THE ONE HAND AND THE FEAR OF SELF-INCRIMINATION ON THE OTHER WAS "A CHOICE BETWEEN THE ROCK AND THE WHIRLPOOL" WHICH MADE THE STATEMENTS PRODUCTS OF COERCION IN VIOLATION OF THE FOURTEENTH AMENDMENT.

Id. AT 496.

IN THE INSTANT CASE, THE COMPLAINED OF HOME RULE CHARTER PROVISION WAS NOT EVEN TANGENTIALLY INVOLVED SINCE PETITIONER WAS NEVER GIVEN THE CHARTER WARNINGS AND, IN FACT, ASSERTED HIS PRIVILEGE TO DECLINE TO ANSWER TWO SEPARATE QUESTIONS. COMMONWEALTH V. KELLY, SUPRA AT 362. IT IS THEREFORE CLEAR THAT THERE IS NO JURISDICTION HEREIN INVOLVED UNDER 28 U.S.C. § 1257(2). ADDITIONALLY, AS THE WARNINGS WERE NEVER EVEN GIVEN IN THIS CASE, NO ISSUE EXISTS WHICH WOULD

JUSTIFY REVIEW BY APPEAL OR CERTIORARI (AS THIS COURT DID IN GARRITY).

II. THE DECISION OF THE PENNSYLVANIA SUPREME COURT IS CLEARLY CORRECT AND NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED IN THIS APPEAL.

APPELLANT, PRIOR TO HIS GRAND JURY TESTIMONY WAS WARNED OF HIS RIGHT NOT TO INCRIMINATE HIMSELF. DURING HIS TESTIMONY HE ANSWERED CERTAIN QUESTIONS, BUT SELECTIVELY INVOKED HIS FIFTH AMENDMENT PRIVILEGE AS TO TWO QUESTIONS. HE WAS NEVER GIVEN ANY ALLEGEDLY COERCIVE HOME RULE CHARTER WARNINGS. THE PENNSYLVANIA COURTS DETERMINED THAT APPELLANT'S GRAND JURY TESTIMONY WAS VOLUNTARY SINCE HIS SELECTIVE ASSERTION OF HIS FIFTH AMENDMENT PRIVILEGE NEGATED ANY CLAIM THAT THE MERE EXISTENCE OF THE HOME RULE CHARTER COERCED HIS TESTIMONY. APPELLANT'S GRAND JURY TESTIMONY WAS THEREFORE PROPERLY INTRODUCED AT TRIAL.

THIS COURT HAS HELD THAT EVEN IF A PARTY SHOULD NOT HAVE BEEN COMPELLED TO TESTIFY BEFORE A GRAND JURY, IF FALSE TESTIMONY WAS IN FACT GIVEN, THE ERRONEOUSLY COMPELLED TESTIMONY WOULD NOT BE SUBJECT TO SUPPRESSION IN A SUBSEQUENT STATE PERJURY TRIAL. UNITED STATES V. MANDUJANO, 425 U.S. 564 (1976). IN LIGHT OF MANDUJANO NO SUBSTANTIAL FEDERAL QUESTION EXISTS WHICH WOULD JUSTIFY REVIEW BY APPEAL OR WRIT OF CERTIORARI.

CONCLUSION

FOR ALL THE FOREGOING REASONS, APPELLEE MOVES THAT THIS APPEAL BE DISMISSED.

BEFORE THE JANUARY, 1974,
SPECIAL INVESTIGATING GRAND JURY

Testimony of:
OFFICER WILLIAM KELLY

Friday, December 20, 1974, 4:13 P.M.

907 Five Penn Center Plaza
Philadelphia, Pa.

APPEARANCES:

PETER NOEL DUHAMEL, ESQUIRE,
Assistant Attorney General,
for the Office of the Special Prosecutor.

APPENDIX "A"

15 b

OFFICER WILLIAM KELLY (Badge No. 3987,
3rd Police District), previously sworn, was
examined and testified as follows:

EXAMINATION

MR. DUHAMEL: May the record reflect that
there is a quorum of seventeen grand jurors present.
My name is Peter Noel Duhamel. I am an Assistant
Attorney General in the Office of the Special
Prosecutor. At this time I will assist the grand
jury by examining a witness who is appearing before
the grand jury in regards to allegations of police
corruption in the Philadelphia Police Department.

BY MR. DUHAMEL:

Q Would you please identify yourself by stating your
name and your position for the record.

A Officer William Kelly, No. 3987, 3rd Police District.

Q Officer Kelly, is it correct that you were present
during a hearing before Judge Takiff on Wednesday after-
noon of this week?

A Yes.

Q And at that time is it true that Judge Takiff
explained to all those present the law in regards to
conflict of interest?

A Yes.

Q And is it true that you indicated at that time that

you fully understood the explanation as given by Judge Takiff?

A Yes.

Q And is it true that you still understand the instruction that was given by Judge Takiff regarding conflict of interest?

A Yes.

Q Are you presently represented by counsel?

A Yes.

Q And who is that counsel?

A Tony Pirillo.

Q Mr. Pirillo.

In electing to continue to be represented by Mr. Pirillo, is it true that you have elected to waive any possible future prejudice resulting from any conflict of interest?

A What's that again?

Q The Judge explained the possibility of conflict of interest developing in being represented by Mr. Pirillo.

A Right.

Q So he stated that if you elect to continue to be represented by Mr. Pirillo, which is your right, that thereby you are waiving any possible future prejudice which may result from any conflict of interest, is that correct?

A Right.

Q Thank you.

During what period of time were you an inspector's man in the West Police Division?

A From May of '72 to February, '74.

Q Was there any particular reason why you were transferred, or did you request a transfer out of that division --

A No, I didn't.

Q -- or just normal police practice?

Directing your attention to this document which has already been marked Grand Jury Exhibit No. 1, Marrese, 9/5/74, and is initialed "KS," would you please examine this document and identify it for the grand jury.

A Search warrant.

Q It's a search warrant.

Who is it requested by, sir?

A Me.

Q The grand jury can't read it, that's why I'm asking.

A Policeman William Kelly, No. 3987, West Police Division.

Q There is a DC number, is that correct?

A Yes.

Q Could you please state for the record what the DC number is?

Q And this document is a sworn document, is that correct?

A That's right.

Q You testified to the facts alleged therein under oath, is that correct?

A That's right.

Q Could you please read the probable cause section, which is the facts you swore to under oath, into the record?

A "Acting on information received from a reliable informant who in the past four months has given me information that has led to three arrest for this type of violation resulting in all three being held for court, physical evidence being confiscated. On 9/24/73 at approximately 12:30 p.m. my informant had cause to be inside the 'Chippy's Bar' located at 6400 Vine Street and did place with the bartender two horse bets and three number bets, the bartender is known to him as 'Joe.' On 9/25/73 between the hours of 12:15 p.m. and 1:00 p.m. surveillance was set up on the above location and I observed twenty-two people enter and leave this location after one or two minutes. On 9/26/73 between the hours of 12:30 p.m. and 1:00 p.m. surveillance was again set up

on this location and on this occasion I did observe twenty-five persons enter this location and leave after staying approximately two to three minutes. From information received and my personal observations it is my belief that the above subject is engaged in an illegal lottery and book-making operation which he conducts from inside 'Chippy's Bar,' above location."

Q Thank you, sir.

Now, you did swear to these facts under oath, is that correct?

A That's correct.

Q And are these facts as alleged in the probable cause section that you just read into the record, are they in fact true?

A That's correct.

Q Thank you, sir.

Officer Kelly, do you know an individual by the name of Joe Narcise?

A Yes.

Q What is your relationship with this individual?

A No relationship.

Q How do you happen to know this individual?

A I had a search warrant for him.

Q Is this the search warrant that you just read?

A That's right.

Q Have you ever had occasion to speak with Mr. Narcise prior to the execution of this search warrant?

A No.

Q Did you have any we'll say hearsay knowledge of Mr. Narcise prior to the time of the search warrant? Had you heard -- let me put it this way -- I don't mean to confuse you -- if I understand correctly, as a plain-clothes officer, an inspector's man in the West Police Division, it was in a sense one of your duties to investigate instances of gambling violations, is that correct?

A That's correct.

Q And pursuant to those duties did you ever become aware of information regarding gambling activities being conducted by Mr. Narcise other than the facts that were alleged in the search warrant?

A No.

Q Have you ever -- or, excuse me, had you ever spoken to Mr. Narcise personally prior to the execution of this search warrant?

A No.

Q Had you ever met Mr. Narcise in Chippy's Bar and had a drink with him and talked with him at that time while drinking with him? 21 h

A At what time?

Q During the conversation with him, while having a drink at Chippy's Bar, at any time prior to the execution of the search warrant.

A No.

Q Have you ever attempted to contact Mr. Narcise through a bartender by the name of Don Nigro?

A When?

Q At any time.

A I take the Fifth Amendment on that.

Q Fifth Amendment. Does that mean that you refuse to answer on the grounds that the answer might tend to incriminate you?

A Yes.

Q Has Mr. Narcise ever contacted you through Don Nigro?

A I take the Fifth.

Q Once again, just so it's clear for the record, when you say you take the Fifth, it will mean that you are refusing to answer on the grounds that the answer may tend to incriminate you, is that correct?

A That's right.

MR. DUHAMEL: Thank you, sir.

You may be excused for one moment, sir.

(The witness left the grand jury room

at 4:20 o'clock p.m., whereupon the following ensued:)

MR. DUHAMEL: This is for the record. In considering prior testimony that has been given to the Investigating Grand Jury, the grand jury is now aware that Mr. Kelly's testimony has -- he has perjured himself by his testimony on two different occasions, by stating that the facts alleged in the search warrant are in fact true -- the grand jury has testimony indicating that this was not true -- by also stating that he has never met with Mr. Narcise in Chippy's Bar before. The grand jury also has testimony that that in fact is a lie. On July 30th, 1973, he did in fact meet with Mr. Narcise and that meeting was observed by Corporal Albert Pistone, who was working at that time in an undercover capacity for the Pennsylvania State Police.

(The witness returned to the grand jury room at 4:22 o'clock p.m.)

MR. DUHAMEL: On the record.

Officer Kelly, at this time the foreperson will instruct you as to the nature of your subpoena.

THE FOREMAN: You are advised that you

are under a continuing subpoena. When and if we want you back here, we will notify you either by mail, phone or through your attorney.

MR. DUHAMEL: And I'd also like to state for the record, Mr. Kelly, make sure that you understand it, that you are not permitted to discuss any grand jury matters that occurred this afternoon involving you with anyone other than your attorney, Mr. Pirillo, is that correct?

THE WITNESS: That's correct.

MR. DUHAMEL: And you understand that?

THE WITNESS: Yes.

MR. DUHAMEL: Fine. Thank you very much, sir. You are excused.

One more thing, for the record, if we have to contact you, should we do so through Mr. Pirillo?

THE WITNESS: Through the Police Department.

MR. DUHAMEL: You'd rather go through the Police Department. Fine. Thank you very much, sir.

(Testimony concluded at 4:23 o'clock p.m.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

GRAND JURY

RE: Investigation of Police Corruption

BEFORE: Hon. Harry Takiff, J.

Room 225 City Hall
Philadelphia, Penna.

Wednesday, December 18, 1974

PRESENT:

PETER W. DUHAMEL, ESQ.
Assistant Attorney General
Office of Special Prosecutor

HERBERT LEVIN, ESQ.
Attorney for Mary Boone

GUSTINE J. PELAGATTI, ESQ.
Attorney for Sylvester Figuera

APPENDIX "B"

HAROLD SCHULMAN ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
SUITE 205 - 1 NORTH 13TH STREET
PHILADELPHIA, PENNSYLVANIA 19107
LO 3-1237-6

THE COURT: We have a number of witnesses.
As I call your names, will you please identify
yourself? Spell your name, your second name, and
give your address for the record? Mary Boone:

MISS BOONE: Mary Boone. B-O-O-N-E, 3415
Disston Street.

THE COURT: Are you attended by Judge
Levin? Good morning, Judge.

Mr. Figuera?

MR. FIGHERA: Sylvester F-I-G-H-E-R-A,
1921 South Hicks.

THE COURT: You are attended by Mr.
Pelagatti?

MR. FIGHERA: Yes, sir.

THE COURT: Staff Inspector Edmund
Zengolowicz? I trust I don't mispronounce your name.

LIEUTENANT COLE: Sir, he's not here. I
understand he is on vacation.

MR. DUHAMEL: Your Honor, I received a
call approximately at nine-twenty saying he did show
up today and he's proceeding over here. He is
slightly delayed but he is proceeding over here.

THE COURT: Inspector Gregory Sabor?

LIEUTENANT COLE: He is en route, your Honor, and he will be here any moment.

THE COURT: Captain Bernard Small?

CAPTAIN SMALL: Here, your Honor.

THE COURT: Will you give your address, Captain Small?

CAPTAIN SMALL: Home address?

THE COURT: Either your home or business.

CAPTAIN SMALL: Philadelphia Police Department, Nineteenth District.

THE COURT: Lieutenant William Cole?

LIEUTENANT COLE: C-O-L-E, your Honor.
District Attorney's Office.

THE COURT: Officer William Kelly?

OFFICER KELLY: Here, your Honor,
K-E-L-L-Y.

THE COURT: Your address, sir?

OFFICER KELLY: Philadelphia Police Department, Third District.

THE COURT: Officer Charles Dougherty?

OFFICER DOUGHERTY: D-O-U-G-H-E-R-T-Y,
Philadelphia Police Department, Nineteenth District.

THE COURT: Officer Stanley Hagerty?

OFFICER HAGERTY: H-A-G-E-R-T-Y, 2254.

THE COURT: Officer Candito?

OFFICER CANDITO: C-A-N-D-I-T-O,
Philadelphia Police Department, West Police Division.

THE COURT: Officer Martin Grawl?

OFFICER GRAWL: Here, your Honor,
G-R-A-W-L, Eighteenth Police District.

THE COURT: The gentleman who arrived belatedly?

INSPECTOR ZONGOLOWICZ: Inspector Zongolowicz. Z-O-N-G-O-L-O-W-I-C-Z, Special Affairs.

THE COURT: The missing gentleman is Inspector Gregory Sambor, and the information is he is en route. We will nevertheless proceed in his absence.

Miss Boone, gentlemen, I am the Supervising Judge for the Grand Jury which has subpoenaed you to appear before it. The Jury has requested your appearance because they have reason to believe you have in your possession knowledge and information which is relevant and material to the matter

currently being investigated by the Jury.

All witnesses who appear before the Jury, no matter in what capacity they do appear, are entitled to the instruction of the Court with respect to their rights and their duties, and I will appropriately instruct you at this time.

With respect to your rights, first you have the right to the advice and assistance of counsel. That means you may confer with an attorney and discuss with him any and all matters pertaining to your appearances before the Jury, including the right to disclose to your attorney, if you have one, everything that transpires before the Grand Jury after you have appeared and testified.

If you have counsel, you may confer with him before you testify, after you testify, and during any recesses which may be declared by the Jury. However, under our law, an attorney may not accompany a witness inside the Grand Jury room while the witness is actually appearing and testifying.

I will ask you individually with respect

to representation. Miss. Boone, you are attended by Judge Levin. Have you had an opportunity to confer with him and has he advised you of your rights and privileges?

MISS BOONE: A little, not a lot.

THE COURT: Well, I will instruct the Deputy Attorney General to defer your appearance until you have had reasonable opportunity to discuss these matters with Judge Levin and get the benefit of his counsel and advice.

Mr. Figuera, have you had an opportunity to confer with Mr. Pelagatti?

MR. FIGHERA: Yes, sir.

THE COURT: And has he advised you of your rights and your privileges?

MR. FIGHERA: Yes, sir.

THE COURT: Inspector Zongolowicz, have you conferred with counsel, sir?

INSPECTOR ZONGOLOWICZ: No, sir.

THE COURT: Do you desire to do so prior to your appearance?

INSPECTOR ZONGOLOWICZ: No, sir.

THE COURT: Captain Small, have you

conferred with counsel?

CAPTAIN SMALL: No, sir.

THE COURT: Do you desire to do so prior to your appearance?

CAPTAIN SMALL: At this time, no sir.

THE COURT: Lieutenant Cole, have you conferred with counsel?

CAPTAIN SMALL: Mr. Pirillo, sir.

THE COURT: Has Mr. Pirillo advised you of your rights and privileges?

CAPTAIN SMALL: Yes, sir.

THE COURT: Officer Kelly, have you conferred with counsel?

OFFICER KELLY: Yes, sir.

THE COURT: With whom have you conferred?

OFFICER KELLY: Mr. Pirillo.

THE COURT: Has he advised you of your rights and privileges?

OFFICER KELLY: Yes, sir.

THE COURT: Officer Dougherty, have you conferred with counsel?

OFFICER DOUGHERTY: Yes, sir, Mr. Pirillo.

THE COURT: And has he advised you of your

rights and privileges?

OFFICER DOUGHERTY: Yes, sir.

THE COURT: Officer Hagerty, have you conferred with counsel?

OFFICER HAGERTY: No, sir.

THE COURT: Do you desire to confer with counsel prior to your appearance?

OFFICER HAGERTY: Yes, I could.

THE COURT: With whom do you wish to confer?

OFFICER HAGERTY: Mr. Pirillo.

THE COURT: And Officer Candito, have you conferred with counsel?

OFFICER CANDITO: No, sir.

THE COURT: Do you desire to do so prior to your appearance?

OFFICER CANDITO: Yes, sir.

THE COURT: With whom do you wish to confer?

OFFICER CANDITO: Mr. Pirillo.

THE COURT: Officer Grawl, have you conferred with counsel, sir?

OFFICER GRAWL: No, sir.

THE COURT: Do you desire to do so?

OFFICER CRAWL: With Mr. Pirillo, sir.

THE COURT: As I previously observed, the Deputy Attorney General will defer the appearances of the officers who have indicated they wish to confer with Mr. Pirillo until they have had an opportunity to do so.

With respect to the other witnesses who have not heretofore conferred with counsel and do not choose to do so at this time, gentlemen, if at any time during the course of your appearances before the Grand Jury, you do conclude that you do wish to avail yourselves of the opportunity to confer with counsel so that you may get the benefit of counsel's assistance and guidance with respect to your rights and privileges, if you will advise the Deputy Attorney General or the Court that that is your desire, an appropriate recess will be declared so that you will have a full and adequate opportunity to avail yourselves of that counsel.

Secondly, with respect to your rights, you have the right to refuse to answer any question as to which the answer might tend to incriminate you.

You may, if you wish, give a factual reason for your refusal, but you are not obliged to do so. It is merely sufficient that you state the legal conclusion that you are invoking your constitutional privileges against self-incrimination or any other constitutional privilege you may claim.

If you answer some questions, that does not mean that you are thereafter barred from invoking your privilege if it is appropriate to do so. You may invoke your privilege as to any specific question where you deem it appropriate. In this regard, let me caution you that the constitutional privilege against self-incrimination is a very real right that every citizen possesses and when it's appropriately exercised, it will be protected and enforced by the Court. However, it is no a right to be claimed arbitrarily or capriciously. Grand Juries are entitled to every witness' testimony, save only that testimony which is incriminatory in nature as to the individual who is testifying. The right is appropriately claimed when a witness reasonably and in good faith believes that the answer to a particular question put, may in fact

tend to incriminate him or her. Under such circumstances, it is appropriate to claim the privilege.

With respect to those of you who are employees of the City of Philadelphia, I do not know whether the circumstance will or will not arise, but should you claim constitutional privilege it may then become incumbent upon me to give you further instruction by reason of certain provisions of the Home Rule Charter. However, I will defer any such supplementary instruction until and unless that instruction is in fact required.

Next with respect to your rights. Should any problem of any nature arise during the course of your appearances before the Jury such as by way of illustration, if you are unsure as to whether you may appropriately claim your constitutional privilege or any other problem, you have a right to appear before me either alone or together with your counsel and obtain a Ruling from me on the matter. It is my obligation and responsibility as the Supervising Judge to be available and to rule upon any problem with which any witness may be confronted during the course of his or her appearance before

the Jury. And should the circumstances arise, I want you to understand that you have a right to call upon me, and I have a responsibility to you to rule upon any such problem. I am and will be available for such purposes.

Now, in addition to these rights, you have certain duties. The first of which is the obvious duty to give full, truthful and complete answers to all questions except only those questions which you decline to answer on the ground that the answer might tend to incriminate you. And secondly, you have the duty of secrecy. The Grand Jury proceeding is a secret proceeding for the benefit of both the Jury as well as for the benefit of the witnesses. I have already advised you that if you have counsel, you have a right to make a complete and total disclosure to your attorney of everything that transpires before the Grand Jury, including any information that you learned from the Grand Jury.

With that single exception, however, you are under duty to maintain secrecy as to the questions and answers, whether elicited during the course of your appearances, as to all other persons

be they members of your family, your household, your business and professional associates or anyone else.

Are there any questions?

* MISS BOONE: Just I would like to state, your Honor, that I'm ready to appear whenever you want me.

THE COURT: Thank you. I know we have the benefit of your cooperation. You have always been most cooperative.

Very well, I will now administer the oath to you. Will you please rise and place your right hands upon the Bibles?

CAPTAIN SMALL: May I ask one question? Are we allowed to discuss anything, like not the specific questions, but the general theme with our superiors?

THE COURT: No.

CAPTAIN SMALL: Nothing at all, sir?

THE COURT: Nothing at all.

You and each of you do solemnly swear that the testimony you will give before the Grand Jury and the matters being inquired into by it

shall be the truth, the whole truth and nothing but the truth, so help you God.

Thank you very much.

(Whereupon Harold Schulman was sworn as official court stenographer for the Court of Common Pleas.)

C E R T I F I C A T I O N

I hereby certify that the proceedings, evidence and objections noted, are contained fully and accurately in the notes taken by me on the hearing of the above deposition, and that this copy is a correct transcript of the same.

Harold Schulman, Notary Public
Certified Court Reporter